

AS

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 97-052-C - ORDER NO. 97-153
MARCH 4, 1997

IN RE: Petition of Low Tech Designs, Inc.) ORDER
for Arbitration to Establish Wholesale) DENYING
Rates and an Interconnection Agreement) PETITION
for Access to and Rates for Unbundled)
Network Elements with GTE South, Inc.)

This matter comes before the Public Service Commission of South Carolina (the "Commission") on the Petition ("Petition") of Low Tech Designs, Inc. ("LTD") for Arbitration before the Commission with GTE South, Inc. ("GTE") pursuant to the Telecommunications Act of 1996 (the "Act"). LTD's Petition was filed on or about January 17, 1997, and it requests that the Commission arbitrate several issues between LTD and GTE to establish an Interconnection Agreement. GTE filed a Return and Response in Opposition to the Petition on or about February 3, 1997. LTD then filed an Answer to GTE's Return on or about February 7, 1997. The Commission now considers these filings and denies LTD's Petition.

LTD attempts to avail itself of the Arbitration provisions of the Act in order to enter the local exchange market in South Carolina. It purports to have begun interconnection negotiations with GTE in August of 1996 in order to offer enhanced call processing services and advanced facilities-based network

"solutions." As admitted in its Petition, LTD is not a certificated new entrant local exchange carrier (LEC) in South Carolina. LTD in fact previously submitted an Application for a Certificate of Public Convenience and Necessity to this Commission. However, the Commission returned the Application to LTD for resubmission since the Application was insufficient on several grounds. LTD has made no further attempt to submit the complete and appropriate Application or otherwise comply with the statutory certification requirements.

LTD now seeks relief from the certification requirement of S.C. Code Ann. Section 58-9-10(13) (Supp. 1996), and further rejects that statute by stating in its Petition that State certifications "will be a barrier to entry" to companies such as LTD to entering the telecommunications market. LTD quotes Section 253(A) of the federal Act regarding barriers to entry as support for its position: "No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." In its prayer, LTD finally requests the Commission arbitrate the outstanding issues between GTE and LTD.

In its Return to LTD's Petition, GTE states that LTD's suggestion that Sections 58-9-10(13) and Section 58-9-280(B) et seq. are "barriers to entry" is, at best, fallacious. GTE illuminates the fact that Section 58-9-280(B) et seq. was adopted after passage of the federal Act and does not conflict with the

Act. LTD's Answer to GTE's Response reiterates that Section 58-9-10(13) and related Code Sections are indeed barriers to entry and are contrary to the spirit and intent of the federal Act.

This Commission is not persuaded by LTD's arguments. S.C. Code Ann. Sections 58-9-10(13) and Section 58-9-280(B) et seq. (Supp. 1996) are law in this State. Section 58-9-280(B) authorizes the Commission to grant certification to applicants that propose to furnish local telephone service in the service territory of an incumbent LEC. The "applicants" who propose to operate as a telephone utility are defined as "new entrant local exchange carriers" in Section 58-9-10(13), and LTD indeed would be a "new entrant LEC." The requirements of Section 58-9-280(B) exist for any company that enters the local exchange market in this changing telecommunications industry. We feel that these Code sections indeed are not violative of or contrary to the spirit of the federal Act. As support for this position, we rely on the portion of Section 253 that LTD failed to quote in its filings:

State Regulatory Authority. - Nothing in [Section 253] affects the authority of a State to impose, on a competitively neutral basis and consistent with Section 254, requirements necessary to preserve and advance universal service, protect the public's safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

Section 253(B).

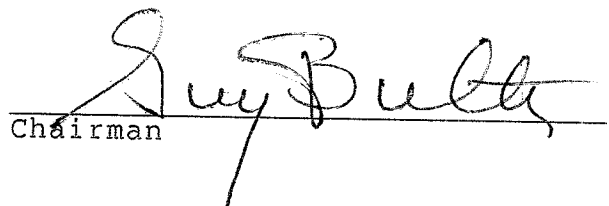
This Commission takes seriously its charge to uphold the law in South Carolina and protect the public's safety, welfare and

rights, as well as the service quality provided by telecommunications companies. We do not view our Legislature's actions as "legal tools" to be used as barriers, but instead as shields which we must uphold for the protection of consumers.

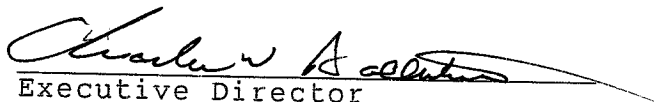
LTD does not require interconnection rates in order to file an Application for a Certificate of Public Convenience and Necessity in South Carolina. LTD may file an illustrative tariff, as we recognize that final rates are unknown until an Agreement is approved by this Commission. Therefore, this Commission denies LTD's Petition for Arbitration based on LTD's failure to fully pursue and obtain the certification required for it to become a competing LEC in South Carolina. We note that no other "uncertified" company has petitioned this Commission for Arbitration.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)